

United States Bankruptcy Court
District of NevadaIn re:
CASH CLOUD, INC.
DebtorCase No. 23-10423-mkn
Chapter 11**CERTIFICATE OF NOTICE**District/off: 0978-2
Date Rcvd: Sep 11, 2023User: admin
Form ID: pdf970Page 1 of 4
Total Noticed: 6

The following symbols are used throughout this certificate:

Symbol	Definition
+	Addresses marked '+' were corrected by inserting the ZIP, adding the last four digits to complete the zip +4, or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Sep 13, 2023:

Recip ID	Recipient Name and Address
aty	+ ANDREW J. MATOTT, SEWARD & KISSEL, ONE BATTERY PARK PLAZA, NEW YORK, NY 10004-1485
aty	+ CHRISTOPHER D. JOHNSON, DIAMOND MCCARTHY LLP, 909 FANNIN STREET, SUITE 3700, HOUSTON, TX 77010-1049
aty	+ JOHN R. ASHMEAD, SEWARD & KISSEL, ONE BATTERY PARK PLAZA, NEW YORK, NY 10004-1485
aty	+ LAURA MILLER, SEWARD & KISSEL, ONE BATTERY PARK PLAZA, NEW YORK, NY 10004-1485
aty	+ ROBERT J. GAYDA, SEWARD & KISSEL, ONE BATTERY PARK PLAZA, NEW YORK, NY 10004-1485

TOTAL: 5

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.

Electronic transmission includes sending notices via email (Email/text and Email/PDF), and electronic data interchange (EDI). Electronic transmission is in Eastern Standard Time.

Recip ID	Notice Type: Email Address	Date/Time	Recipient Name and Address
aty	+ Email/Text: jared.a.day@usdoj.gov	Sep 11 2023 23:55:00	JARED A. DAY, OFFICE OF THE US TRUSTEE, 300 BOOTH ST #3009, RENO, NV 89509-1360

TOTAL: 1

BYPASSED RECIPIENTS

The following addresses were not sent this bankruptcy notice due to an undeliverable address, *duplicate of an address listed above, *P duplicate of a preferred address, or ## out of date forwarding orders with USPS.

NONE

NOTICE CERTIFICATION

I, Gustava Winters, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed .R. Bank. P.2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Sep 13, 2023

Signature: /s/Gustava Winters**CM/ECF NOTICE OF ELECTRONIC FILING**

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on September 11, 2023 at the address(es) listed below:

Name	Email Address
ADAM P. SCHWARTZ	on behalf of Interested Party LUX VENDING LLC d/b/a BITCOIN DEPOT aschwartz@carltonfields.com, amaranto@carltonfields.com

District/off: 0978-2
Date Rcvd: Sep 11, 2023

User: admin
Form ID: pdf970

Page 2 of 4
Total Noticed: 6

ADAM P. SCHWARTZ	on behalf of Defendant LUX VENDING LLC d/b/a BITCOIN DEPOT aschwartz@carltonfields.com, amaranto@carltonfields.com
ANNE FREELAND	on behalf of Creditor AVT Nevada L.P. atfreeland@michaelbest.com, knpowell@michaelbest.com; courtmail@michaelbest.com
ARIEL E. STERN	on behalf of Creditor IPFS CORPORATION ariel.stern@akerman.com akermanlas@akerman.com
BART K. LARSEN	on behalf of Creditor Enigma Securities Limited BLARSEN@SHEA.LAW 3542839420@filings.docketbird.com
BRETT A. AXELROD	on behalf of Debtor CASH CLOUD INC. baxelrod@foxrothschild.com, pchlum@foxrothschild.com; mwilson@foxrothschild.com; arcdocketing@foxrothschild.com
BRETT A. AXELROD	on behalf of Plaintiff CASH CLOUD INC., DBA COIN CLOUD baxelrod@foxrothschild.com, pchlum@foxrothschild.com; mwilson@foxrothschild.com; arcdocketing@foxrothschild.com
BRETT A. AXELROD	on behalf of Plaintiff CASH CLOUD INC., dba COIN CLOUD baxelrod@foxrothschild.com, pchlum@foxrothschild.com; mwilson@foxrothschild.com; arcdocketing@foxrothschild.com
BRETT A. AXELROD	on behalf of Plaintiff CASH CLOUD INC., DBA COIN CLOUD, baxelrod@foxrothschild.com, pchlum@foxrothschild.com; mwilson@foxrothschild.com; arcdocketing@foxrothschild.com
BRIAN D. SHAPIRO	on behalf of Creditor OPTCONNECT MANAGEMENT LLC brian@brianshapirolaw.com, kshapiro@brianshapirolaw.com; 6855036420@filings.docketbird.com
BRIGID M. HIGGINS	on behalf of Creditor Black Hole Investments fna EZ Coin LLC bhiggins@blackwadhamslaw.com, dmeeter@blackwadhamslaw.com; mstallsworth@blackwadhamslaw.com; mdavis@blackwadhamslaw.com
CANDACE C CARLYON	on behalf of Interested Party CHRIS MCALARY ccarlyon@carlyoncica.com CRobertson@carlyoncica.com; nrodriguez@carlyoncica.com; 9232006420@filings.docketbird.com; Dcica@carlyoncica.com
CHAPTER 11 - LV	USTPRegion17.lv.ecf@usdoj.gov
CRAIG P. DRUEHL	on behalf of Creditor OPTCONNECT MANAGEMENT LLC craig.druehl@dechert.com
DAWN M. CICA	on behalf of Interested Party CHRIS MCALARY dcica@carlyoncica.com nrodriguez@carlyoncica.com; crobotson@carlyoncica.com; dmcica@gmail.com; dcica@carlyoncica.com; tosteen@carlyoncica.com; 3342887420@filings.docketbird.com
JAMES M JIMMERSON	on behalf of Plaintiff CASH CLOUD INC., DBA COIN CLOUD jmj@jimmersonlawfirm.com
JAMES PATRICK SHEA	on behalf of Creditor Enigma Securities Limited jshea@shea.law blarsen@shea.law; support@shea.law
JEANETTE E. MCPHERSON	on behalf of Plaintiff CASH CLOUD INC., dba COIN CLOUD JMcPherson@FoxRothschild.com, ahosey@foxrothschild.com, ARCDocketing@foxrothschild.com
JEANETTE E. MCPHERSON	on behalf of Debtor CASH CLOUD INC. JMcPherson@FoxRothschild.com, ahosey@foxrothschild.com, ARCDocketing@foxrothschild.com
JOHN T. WENDLAND	on behalf of Creditor AVT Nevada L.P. jwendland@wldlaw.com, NVeFile@weildrage.com
Jeffrey R. Sylvester	on behalf of Interested Party CKDL Credit LLC jeff@sylvesterpolednak.com, kellye@sylvesterpolednak.com
KURT R. BONDS	on behalf of Creditor Populus Financial Group Inc. nvefile@hallevans.com, kbonds@alversontaylor.com; adidio@alversontaylor.com
LEW BRANDON, JR.	on behalf of Creditor UNITED NATURAL FOODS INC. lbrandon@bsnv.law
LOUIS M BUBALA, III	on behalf of Interested Party BROOKFIELD RETAIL PROPERTIES INC. lbubala@kcnvlaw.com, cdroessler@kcnvlaw.com; kmilks@kcnvlaw.com

District/off: 0978-2
Date Rcvd: Sep 11, 2023

User: admin
Form ID: pdf970

Page 3 of 4
Total Noticed: 6

MARJORIE A. GUYMON	on behalf of Creditor Armondo Redmond bankruptcy@goldguylaw.com mariaa@goldguylaw.com;lauriea@goldguylaw.com;amarisp@goldguylaw.com;kathrinev@goldguylaw.com
MARJORIE A. GUYMON	on behalf of Creditor Trangistics Inc. bankruptcy@goldguylaw.com, mariaa@goldguylaw.com;lauriea@goldguylaw.com;amarisp@goldguylaw.com;kathrinev@goldguylaw.com
MAURICE VERSTANDIG	on behalf of Creditor Brink's Inc. mac@mbvesq.com, lisa@mbvesq.com;verstandig.mauricer104982@notify.bestcase.com
MICHAEL L WACHTELL	on behalf of Creditor ORACLE AMERICA INC. mwachtell@buchalter.com
NEDDA GHANDI	on behalf of Creditor ROCKITCOIN LLC nedda@ghandilaw.com, lks@ghandilaw.com,nedda@ecf.inforuptcy.com;r41525@notify.bestcase.com,shara@ghandilaw.com
OGONNA M. BROWN	on behalf of Creditor Cole Kepro International LLC obrown@lewisroca.com, ogonna-brown-4984@ecf.pacerpro.com,dberhanu@lewisroca.com,ombcalendar@lewisroca.com;jhess@lewisroca.com,klopez@lewisroca.com,rcreswell@lewisroca.com
OGONNA M. BROWN	on behalf of Defendant COLE KEPRO INTERNATIONAL LLC obrown@lewisroca.com, ogonna-brown-4984@ecf.pacerpro.com,dberhanu@lewisroca.com,ombcalendar@lewisroca.com;jhess@lewisroca.com,klopez@lewisroca.com,rcreswell@lewisroca.com
PAUL HAGE	on behalf of Creditor Cole Kepro International LLC phage@taftlaw.com
ROBERT R. KINAS	on behalf of Creditor GENESIS GLOBAL HOLDCO LLC rkinas@swlaw.com, jmath@swlaw.com;mfull@swlaw.com;docket_las@swlaw.com;sdugan@swlaw.com;jfung@swlaw.com
RONALD E. GOLD	on behalf of Creditor WPG Legacy LLC rgold@fbtlaw.com, jkleisinger@fbtlaw.com;eseverini@fbtlaw.com;sbryant@ecf.courtdrive.com
RONALD M TUCKER	on behalf of Creditor SIMON PROPERTY GROUP INC. rtucker@simon.com, rwoodruff@simon.com,cmartin@simon.com,ptropepe@simon.com
RYAN A. ANDERSEN	on behalf of Interested Party Luis Flores ryan@aandblaw.com tatiana@aandblaw.com;melissa@aandblaw.com;ecf-df8b00a4597e@ecf.pacerpro.com;valerie@aandblaw.com;andersen.ryana.b117998@notify.bestcase.com
RYAN J. WORKS	on behalf of Plaintiff OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF CASH CLOUD INC. dba COIN CLOUD rworks@mcdonalddcarano.com, kkirn@mcdonalddcarano.com;bgrubb@mcdonalddcarano.com
RYAN J. WORKS	on behalf of Creditor Committee OFFICIAL COMMITTEE OF UNSECURED CREDITORS rworks@mcdonalddcarano.com kkirn@mcdonalddcarano.com;bgrubb@mcdonalddcarano.com
SHAWN CHRISTIANSON	on behalf of Creditor ORACLE AMERICA INC. schristianson@buchalter.com, cmcintire@buchalter.com
STACY H RUBIN	on behalf of Defendant LUX VENDING LLC d/b/a BITCOIN DEPOT srubin@nevadafirm.com, oswibies@nevadafirm.com;mholley@nevadafirm.com;BKECF@nevadafirm.com
STACY H RUBIN	on behalf of Interested Party LUX VENDING LLC d/b/a BITCOIN DEPOT srubin@nevadafirm.com, oswibies@nevadafirm.com;mholley@nevadafirm.com;BKECF@nevadafirm.com
STEPHEN T LODEN	on behalf of Interested Party CHRIS MCALARY sloden@diamondmccarthy.com cburrow@diamondmccarthy.com
STRETTO	ecf@cases-cr.stretto-services.com aw01@ecfbis.com,pacerpleadings@stretto.com
STUART FREEMAN WILSON-PATTON	stuart.wilson-patton@ag.tn.gov
TIMOTHY A LUKAS	on behalf of Creditor Good 2 Go Stores LLC ecflukast@hollandhart.com
U.S. TRUSTEE - LV - 11	USTPRegion17.lv.ecf@usdoj.gov
ZACHARY WILLIAMS	

District/off: 0978-2

User: admin

Page 4 of 4

Date Rcvd: Sep 11, 2023

Form ID: pdf970

Total Noticed: 6

on behalf of Plaintiff CASH CLOUD INC., dba COIN CLOUD zwilliams@foxrothschild.com,
ARCDocketing@foxrothschild.com; ahosey@foxrothschild.com

TOTAL: 47

CARLYON CICA CHTD.
265 E. Warm Springs Road, Suite 107
Las Vegas, NV 89119

CARLYON CICA CHTD.
CANDACE C. CARLYON, ESQ.
Nevada Bar No.2666
DAWN M. CICA, ESQ.
Nevada Bar No. 4565
265 E. Warm Springs Road, Suite 107
Las Vegas, NV 89119
Phone: (702) 685-4444
Fax: (725) 386-4979
Email: ccarlyon@carlyoncica.com
dcica@carlyoncica.com
Counsel for Chris McAlary

DIAMOND MCCARTHY LLP
ALLAN B. DIAMOND, ESQ.
Texas Bar No. 05801800 (*pro hac pending*)
CHRISTOPHER D. JOHNSON, ESQ.
Texas Bar No. 24012913 (*pro hac pending*)
909 Fannin Street, Suite 3700
Houston, TX 77010
Phone: (713) 333-5100
Fax: (713) 333-5199
Email: adiamond@diamondmccarthy.com
chris.johnson@diamondmccarthy.com
Co-Counsel for Chris McAlary

APL 23-19

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

CASH CLOUD, INC.,
dba COIN CLOUD,

Debtor.

Case No.: Case No. 23-10423-MKN
Chapter 11

**NOTICE OF APPEAL AND STATEMENT
OF ELECTION**

PART 1: IDENTIFY THE APPELLANT(S):

1. Name(s) of appellant(s): Chris McAlary.
2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

☐ Plaintiff

☐ Defendant

☐ Other (describe) _____

For appeals in a bankruptcy case and not in an adversary proceeding.

☐ Debtor

☒ Creditor

☐ Trustee

☐ Other (describe) _____

PART 2: IDENTIFY THE SUBJECT OF THIS APPEAL

1. Describe the judgment, order, or decree appealed from: *Order on Objection to Debtor's First Amended Chapter 11 Plan of Reorganization Dated August 1, 2023* [ECF No. 1120]

2. State the date on which the judgment, order, or decree was entered: August 24, 2023

PART 3: IDENTIFY THE OTHER PARTIES TO THE APPEAL

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

Party

CASH CLOUD, INC., dba COIN CLOUD,

OFFICIAL COMMITTEE OF UNSECURED CREDITORS

Attorney

FOX ROTHSCHILD LLP

BRETT A. AXELROD, ESQ.

(Nv Bar No. 5859)

JEANETTE E. MCPHERSON, ESQ.

(Nv Bar No. 5423)

NICHOLAS A. KOFFROTH, ESQ.

(Nv Bar No. 16264)

ZACHARY T. WILLIAMS, ESQ.

(Nv Bar No. 16023)

1980 Festival Plaza Drive, Suite 700

Las Vegas, Nevada 89135

Telephone: 702-262-6899

Facsimile: 702-597-5503

McDONALD CARANO LLP

RYAN J. WORKS, ESQ.

(NSBN 9224)

AMANDA M. PERACH, ESQ.

(NSBN 12399)

2300 West Sahara Avenue, Suite 1200

Las Vegas, Nevada 89102

Telephone: (702) 873-4100

CARLYON CICA CHTD.
265 E. Warm Springs Road, Suite 107
Las Vegas, NV 89119

CARLYON CICA CHTD.
 265 E. Warm Springs Road, Suite 107
 Las Vegas, NV 89119

OFFICIAL COMMITTEE
 OF UNSECURED CREDITORS

SEWARD & KISSEL LLP
 JOHN R. ASHMEAD, ESQ.
 ROBERT J. GAYDA, ESQ.
 CATHERINE V. LOTEMPIO, ESQ.
 LAURA E. MILLER, ESQ.
 ANDREW J. MATOTT, ESQ.
 One Battery Park Plaza
 New York, NY 10004

PART 4: OPTIONAL ELECTION TO HAVE APPEAL HEARD BY DISTRICT COURT (APPLICABLE ONLY IN CERTAIN DISTRICTS)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

☒ Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

PART 5: SIGN BELOW

/s/ Candace C. Carlyon, Esq.

Date: September 6, 2023

Signature of attorney for appellant(s)
 (or appellant(s) if not represented by an attorney)
 Name, address, and telephone number of attorney
 (or appellant(s) if not represented by an attorney):

CARLYON CICA CHTD.
 CANDACE C. CARYLON, ESQ.
 Nevada Bar No. 2666
 DAWN M. CICA, ESQ.
 Nevada Bar No. 4565
 265 E. Warm Springs Road, Ste. 107
 Las Vegas, Nevada 89119

CARLYON CICA CHTD.
265 E. Warm Springs Road, Suite 107
Las Vegas, NV 89119

DIAMOND McCARTHY LLP

ALLAN B. DIAMOND, ESQ.

Admitted Pro Hac Vice

STEPHEN T. LODEN, ESQ.

Admitted Pro Hac Vice

CHRISTOPHER D. JOHNSON, ESQ.

Admitted Pro Hac Vice

909 Fannin, Suite 3700

Houston, Texas 77010

Co-Counsel for Chris McAlary

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

[Note to inmate filers: If you are an inmate filer in an institution and you seek the timing benefit of Fed. R. Bankr. P. 8002(c)(1), complete Director's Form 4170 (Declaration of Inmate Filing) and file that declaration along with the Notice of Appeal.]

CARLYON CICA CHTD.
265 E. Warm Springs Road, Suite 107
Las Vegas, NV 89119

CERTIFICATE OF SERVICE

I am an employee of Carlyon Cica Chtd. On the date of filing of the foregoing papers with the Clerk of Court I caused a true and correct copy to be served in the following manner:

☒ ELECTRONIC SERVICE: Pursuant to LR 2002 of the United States Bankruptcy Court for the District of Nevada, the above-referenced document was electronically filed and served on all parties and attorneys who are filing users through the Notice of Electronic Filing automatically generated by the Court.

☐ UNITED STATES MAIL: By depositing a true and correct copy of the above-referenced document into the United States Mail with prepaid first-class postage, addressed to the parties at their last-known mailing address(es):

☐ OVERNIGHT COURIER: By depositing a true and correct copy of the above-referenced document for overnight delivery via a nationally recognized courier, addressed to the parties listed below which was incorporated by reference and made final in the w at their last-known mailing address.

☐ FACSIMILE: By sending the above-referenced document via facsimile to those persons listed on the attached service list at the facsimile numbers set forth thereon.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Cristina Robertson
An employee of Carlyon Cica Chtd



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
August 24, 2023

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

* * * * *

In re:) Case No. 23-10423-mkn
CASH CLOUD, INC.,) Chapter 11
dba COIN CLOUD,)
Debtor.) Date: August 17, 2023
Time: 10:30 a.m.

ORDER ON OBJECTION TO DEBTOR'S FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION DATED AUGUST 1, 2023¹

On August 17, 2023, a combined hearing was conducted on final approval of the Debtor's Disclosure Statement for Chapter 11 Plan of Reorganization Dated May 8, 2023 ("Disclosure Statement") (ECF No. 529) as well as on confirmation of its proposed First Amended Chapter 11 Plan of Reorganization Dated August 1, 2023 ("Amended Plan") (ECF No. 996). The combined hearing was held in accordance with a prior order entered by the court that conditionally approved the Disclosure Statement. (ECF No. 554). An additional order was entered setting related deadlines, including the Debtor's submission of an updated liquidation analysis. (ECF No. 918). The hearing was continued provisionally to August 29, 2023.

Prior to the combined hearing, objections to plan confirmation were filed on behalf of the following parties: Brink's Incorporated (ECF Nos. 837 and 838); Christopher McAlary ("McAlary") (ECF No. 1061); and Cole Kepro International, L.L.C. (ECF No. 1070). Prior to

¹ In this Order, all references to "ECF No." are to the number assigned to the documents filed in the above-captioned bankruptcy case as they appear on the docket maintained by the Clerk of Court. All references to "Section" are to provisions of the Bankruptcy Code, 11 U.S.C. §§ 101, et seq.

1 the hearing, a ballot tabulation was filed. (ECF No. 1077). The tabulation reflects that proposed
2 plan treatment has been accepted by Class 2(b) (Genesis Global Holdco, LLC) and by Class 3(b)
3 (general unsecured claims at 96.42% by dollar amount and 95.45% by number). The tabulation
4 also reflects that proposed plan treatment has been rejected by Class 2(c) (Enigma Securities
5 Ltd.) and Class 3(a) (AVT Nevada). No ballots were cast in Class 4 (equity interests), as such
6 interests are presumed to have rejected the proposed plan. Confirmation of the Amended Plan is
7 supported by the Official Committee of Unsecured Creditors (“Creditors Committee”) previously
8 appointed in this Chapter 11 proceeding. (ECF Nos. 131, 177, and 1066).

9 Prior to the hearing, Debtor filed and served a Notice of Filing of Proposed Order: (A)
10 Approving Debtor’s Disclosure Statement [ECF No. 529] on a Final Basis; and (B) Confirming
11 Debtor’s First Amended Chapter 11 Plan of Reorganization Dated August 1, 2023 [ECF No.
12 996] (proposed “Plan Confirmation Order”). (ECF No. 1080). Additionally, Debtor filed and
13 served a Notice of Filing of (A) Revised Exhibit A – Creditor Trust Agreement and Declaration
14 of Trust; and (B) Redline of Exhibit A - Creditor Trust Agreement and Declaration of Trust
15 Attached to Supplement to Debtor’s Chapter 11 Plan of Reorganization Dated May 8, 2023 [ECF
16 No. 528] (“Creditor Trust Agreement”). (ECF No. 1081).

17 At the combined hearing, counsel on behalf of Brink’s Incorporated, Cole Kepro
18 International, L.L.C., Enigma Securities Ltd., and AVT Nevada consented to the language in the
19 proposed Plan Confirmation Order addressing their confirmation objections and proposed plan
20 treatment. No party objected to the language or terms of the Creditor Trust Agreement.
21 Additionally, Enigma Securities Ltd. as well as AVT Nevada did not object to language in the
22 Plan Confirmation Order permitting cramdown treatment of their dissenting Classes 2(C) and
23 3(a). In light of such consent, the court entertained oral argument on the remaining confirmation
24 objection raised by McAlary.

25 McAlary is the only party that continues to object to plan confirmation, even though he is
26 the one who signed the Debtor’s initial Chapter 11 Plan dated May 8, 2023 (ECF No. 528) and
27 also signed the Disclosure Statement on behalf of the Debtor. Regardless of the atypical identity
28

1 of the objecting party, however, the court has an independent duty to determine whether the
2 Chapter 11 plan proponent has satisfied the requirements for confirmation under Section 1129.

3 McAlary's primary objection, in various forms, concerns whether the proposed Amended
4 Plan is feasible under Section 1129(a)(11). McAlary maintains that the Amended Plan does not
5 include an adequate means of implementation as required by Section 1123(a)(5) because its
6 effective date does not occur until after payment of substantial administrative claims anticipated
7 in this case. He argues that unless claims entitled to priority are paid on the effective date as
8 required by Section 1129(a)(9), including Chapter 11 professional fees and other administrative
9 claims under Section 507(a)(2), the Amended Plan simply cannot be implemented. Because the
10 payment of all administrative claims depends on the uncertain results of further efforts to
11 liquidate and/or collect sums claimed by the Debtor, McAlary concludes that there is insufficient
12 evidence to determine when the proposed Plan will be effective and therefore no basis to find
13 that the so-called "feasibility" requirement under Section 1129(a)(11) has been met.

14 Section 1129(a)(11) only requires, however, a finding that confirmation is "not likely to
15 be followed by the liquidation...of the debtor...unless such liquidation...is proposed in the
16 plan." In this instance, the initial Chapter 11 Plan dated May 8, 2023 "toggled" between two
17 alternatives: one if the Debtor obtained a sale of substantially all of its assets, and the other if a
18 sale did not occur. If the former, the Debtor's operations would cease and any remaining assets
19 would be administered through a separate creditor trust; if the latter, a reorganized debtor would
20 emerge to continue operations.

21 After an auction sale of substantially all of the Debtor's assets was approved (ECF No.
22 795), Debtor filed the Amended Plan dated August 1, 2023 that implements the first toggle
23 alternative, i.e., to cease operations and to liquidate its remaining assets through a creditor trust.
24 The consequence of this alternative is dictated by the elements present under Section 1141(d)(3):
25 the Debtor will not receive a bankruptcy discharge because it is liquidating all of its assets, it will
26 no longer engage in business, and it is not an individual eligible for a discharge under Section
27 727(a). Under these circumstances, the court concludes that the actual language used in Section
28 1129(a)(11) has been satisfied, to wit: confirmation of the Amended Plan is not "likely to be

1 followed by the liquidation” of the Debtor because the purpose of the proposed plan itself is the
2 liquidation of the Debtor.

3 The decision to liquidate a non-individual debtor in Chapter 11 rather than to convert to
4 Chapter 7 or to simply dismiss the bankruptcy proceeding carries an additional implication.
5 Under any one of the three alternatives – Chapter 11 liquidation, Chapter 7 conversion, or
6 dismissal of the bankruptcy proceeding - the non-individual entity does not obtain a discharge of
7 its personal liability for existing debts. Under any of the alternatives, unsecured creditors hope
8 to be paid, if at all, from the unencumbered assets of the debtor. Bankruptcy, however, offers
9 certain unique tools available to investigate the activities of a debtor (including by its insiders)
10 and to recover assets transferred by a debtor. Because the administrative expenses of
11 bankruptcy, whether in Chapter 11 or in Chapter 7, are paid if at all ahead of non-priority,
12 unsecured claims, there is limited benefit in incurring additional priority administrative expenses
13 by conversion to Chapter 7 if the same approach to recovering estate assets must be pursued.
14 Thus, a Chapter 11 debtor’s business judgment to liquidate in Chapter 11, rather than converting
15 to Chapter 7, should be given considerable weight, especially if it is supported by an official
16 committee of unsecured creditors. In this instance, the official Creditors Committee as well as
17 over 95% of the nonpriority unsecured creditors casting ballots support confirmation of the
18 Amended Plan.

19 Even if this conclusion is not dictated by the actual words used in Section 1129(a)(11),
20 the traditional notions of Chapter 11 “feasibility” also have been satisfied. Once a permissible
21 decision has been made to liquidate in Chapter 11 rather than to reorganize, far less is required to
22 implement that decision. A reorganized debtor entity will not emerge, a restructuring of existing
23 operations will not occur, a financing of ongoing activities will not be necessary, and a
24 replacement of management is not required. Absent a restructuring or management succession,
25 the disclosure requirements of post-confirmation management under Section 1129(a)(5) simply
26 does not apply.

27 What does apply, however, is the consideration of how the administrative expenses
28 incurred in the Chapter 11 proceeding will be paid. Indeed, the payment of allowed

1 administrative and other priority claims in bankruptcy is appropriately considered in every case.
2 Absent such priority status, there is little incentive or inducement for third parties to provide
3 postpetition goods or services to any bankruptcy estate. Section 1129(a)(9) reflects the
4 contractual nature of Chapter 11 proceedings where priority claimants can insist on payment in
5 full on the effective date of a plan, “except to the extent that the holder of a particular claim has
6 agreed to a different treatment of such claim.” In other words, administrative creditors in certain
7 Chapter 11 cases may conclude that their best hope of being paid all or a greater portion of their
8 priority claims lies in confirming the proposed plan rather than preventing confirmation.
9 Although multiple parties in this case have simply filed “administrative claims” or sought
10 allowance of administrative claims, none have objected to confirmation of the Amended Plan.
11 Similarly, the vast majority of nonpriority unsecured creditors support confirming a plan whose
12 effective date occurs after allowed priority claims are paid in full. Under these circumstances,
13 the court concludes that the requirements of Section 1129(a)(9) have been satisfied.

14 The degree of certainty required for a Chapter 11 plan to be feasible varies from case to
15 case and plan to plan. In this instance, is there a certainty that the proposed creditor trust will
16 succeed in collecting all of the assets it pursues? No. Is there certainty that a Chapter 7 trustee
17 would succeed in collecting all of the assets that she or he pursues? No. Is certainty required?
18 No. Is there a sufficient showing of certainty that the claims of the estate will be pursued? Yes.
19 In conjunction with plan confirmation, Debtor seeks approval of a stipulation for the Creditors
20 Committee to obtain derivative standing to pursue claims of the estate, including a possible claim
21 against McAlary, as well as avoidance and collection claims typically held by the Chapter 11
22 estate. That requested approval of the proposed stipulation is the subject of a separate order. In
23 this instance, an overwhelming majority of the general unsecured creditor class accept an
24 uncertain chance of receiving some return on their claims rather than a certainty of receiving no
25 return at all on their claims.

26 Finally, the court considers McAlary’s objection to the Declaration of Tanner James, to
27 which is attached the Debtor’s amended liquidation analysis. The declarant is the Debtor’s
28 financial adviser who previously was authorized to file the updated liquidation analysis.

McAlary argues that Paragraphs 5, 7, 8, 10, 11, 12, 13, 15, 16, and 17 of the declaration contain inadmissible hearsay. No objection is raised, however, to the liquidation analysis attached as Exhibit 1 to the declaration, nor to the financial adviser's testimony in Paragraph 4 that the Amended Plan does not worsen the outcome for creditors. Moreover, McAlary does not object to the testimony in Paragraph 6 that the value of recoverable assets will materially degrade without the services of current Chapter 11 professionals. McAlary also does not object to the financial adviser's testimony in Paragraph 9 that the assets generated by the proposed creditor trust may be sufficient to pay all allowed administrative and priority claims in full, and possibly provide a small return to general unsecured claims. Regardless of the merit, if any, of McAlary's hearsay objections, the remaining uncontradicted testimony is significant. At the confirmation hearing, no request was made to cross-examine the declarant or to have him testify as a live witness. Moreover, no testimony was offered or provided from McAlary, or any competent witness, to dispute the liquidation analysis offered by the Debtor. On this record, the preponderance of the evidence presented supports a finding and a conclusion that the Amended Plan satisfies the requirements of Section 1129(a)(11), as well as the remaining applicable requirements of Section 1129(a) and 1129(b).

IT IS THEREFORE ORDERED that the Objection to Debtor's First Amended Chapter 11 Plan of Reorganization Dated August 1, 2023, brought by Christopher McAlary, Docket No. 1061, be, and the same hereby is, **OVERRULED**.

IT IS FURTHER ORDERED that Exhibit "1" to the Notice of Filing of Proposed Order: (A) Approving Debtor's Disclosure Statement [ECF No. 529] on a Final Basis; and (B) Confirming Debtor's First Amended Chapter 11 Plan of Reorganization Dated August 1, 2023, filed on August 16, 2023, as Docket No. 1080, is **APPROVED**. Counsel for the Debtors shall upload in final form the proposed order appearing as Exhibit "1" to the aforementioned Notice.

IT IS FURTHER ORDERED that the continued hearing in this matter scheduled provisionally for August 29, 2023, is **VACATED**.

Copies sent via CM/ECF ELECTRONIC FILING

Copies sent via BNC to:

CASH CLOUD, INC.
11700 W CHARLESTON BLVD., #441
LAS VEGAS, NV 89135

UNSECURED CREDITORS
SEWARD & KISSEL
ONE BATTERY PARK PLAZA
NEW YORK, NY 10004

CRAIGHEAD COUNTY TAX
COLLECTOR
511 UNION ST, SUITE 107
JONESBORO, AR 72401

JARED A. DAY
OFFICE OF THE US TRUSTEE
300 BOOTH ST #3009
RENO, NV 89509

ALLAN B. DIAMOND
DIAMOND MCCARTHY LLP
909 FANNIN STREET, SUITE 3700
HOUSTON, TX 77010

BRITTANY B. FALABELLA
HIRSCHLER FLEISCHER, P.C.
2100 EAST CARY STREET
RICHMOND, VA 23223

FOX ROTHSCHILD LLP
1980 FESTIVAL PLAZA DR., SUITE 700
LAS VEGAS, NV 89135

ROBERT J. GAYDA
UNSECURED CREDITORS
SEWARD & KISSEL
ONE BATTERY PARK PLAZA
NEW YORK, NY 10004

JORDI GUSO
BERGER SINGERMAN LLP
1450 BRICKELL AVENUE, STE. 1900
MIAMI, FL 33131

PAUL R HAGE
TAFT STETTINIUS AND HOLLISTER
LLP
27777 FRANKLIN ROAD, SUITE 2500
SOUTHFIELD, MI 48034

JAMES M. JIMMERSON
THE JIMMERSON LAW FIRM, P.C.
415 SOUTH 6TH STREET, SUITE 100
LAS VEGAS, NV 89101

CHRISTOPHER D. JOHNSON
DIAMOND MCCARTHY LLP
909 FANNIN STREET, SUITE 3700
HOUSTON, TX 77010

ANDREW KISSNER
MORRISON & FOERSTER LLP
250 WEST 55TH STREET
NEW YORK, NY 10019-3601

RICHARD KRUGER
TAFT STETTINIUS & HOLLISTER LLP
27777 FRANKLIN ROAD, SUITE 2500
SOUTHFIELD, MI 48034

JOHN J. LAMOUREUX
CARLTON FIELDS, P.A.
4221 W. BOY SCOUT BLVD., STE. 1000
TAMPA, FL 33607

SHARA L LARSON
GHANDI DEETER BLACKHAM
725 S. SOUTH 8TH STREET SUITE 100
LAS VEGAS, NV 89101

LAW OFFICE OF SHEA LARSEN
1731 VILLAGE CENTER CIRCLE, SUITE
150
LAS VEGAS, NV 89134

GARY LEE
MORRISON & FOERSTER LLP
250 WEST 55TH STREET
NEW YORK, NY 10019-3601

James M. Jimmerson
The Jimmerson Law Firm, P.C. 415 S. 6th
Street, Suite 100
Las Vegas, Nevada 89101

CATHERINE V. LOTEMPIO
UNSECURED CREDITORS
SEWARD & KISSEL
ONE BATTERY PARK PLAZA
NEW YORK, NY 10004

ADAM P. SCHWARTZ
CARLTON FIELDS, P.A.
4221 W. BOY SCOUT BLVD., STE. 1000
TAMPA, FL 33607

ANDREW J. MATOTT
SEWARD & KISSEL
ONE BATTERY PARK PLAZA
NEW YORK, NY 10004

TN Dept of Revenue
c/o TN Attorney General's Office
Bankruptcy Division
PO Box 20207
Nashville, TN 37202

MCDONALD CARANO LLP
2300 WEST SAHARA AVE, STE 1200
LAS VEGAS, NV 89102

JANE VANLARE
CLEARY GOTTLIEB STEEN &
HAMILTON LLP
ONE LIBERTY PLAZA
NEW YORK, NY 10006

JUSTIN M. MERTZ
MICHAEL BEST & FRIEDRICH LLP
790 N. WATER STREET, STE. 2500
MILWAUKEE, WI 53202

MICHAEL WEINBERG
CLEARY GOTTLIEB STEEN &
HAMILTON LLP
ONE LIBERTY PLAZA
NEW YORK, NY 10006

LAURA MILLER
SEWARD & KISSEL
ONE BATTERY PARK PLAZA
NEW YORK, NY 10004

ROBERT S. WESTERMANN
HIRSCHLER FLEISCHER, P.C.
2100 EAST CARY STREET
RICHMOND, VA 23223

SEAN A. O'NEAL
STEEN & HAMILTON LLP
ONE LIBERTY PLAZA
NEW YORK, NY 10006

KYLE M. WYANT
SHEA LARSEN
1731 VILLAGE CTR CR, STE 150
LAS VEGAS, NV 89134

PROVINCE, LLC
2360 CORPORATE CIRCLE, SUITE 330
HENDERSON, NV 89074

SIMON PROPERTY GROUP, INC.
ATTN: RONALD M. TUCKER, ESQ.
225 WEST WASHINGTON STREET
INDIANAPOLIS, INDIANA 46204

RYAN T. SCHULTZ
FOX, SWIBEL, LEVIN & CARROLL, LLP
200 W. MADISON STREET, SUITE 3000
CHICAGO, IL 60606

1 Clark County Treasurer
2 c/o Bankruptcy Clerk
3 500 S. Grand Central Parkway Box 551220
4 Las Vegas, Nevada 89155

Prime Alliance Bank, Inc.
1868 South 500 West
Woods Cross, UT 84087

5 Corporation Service Company, as
6 Representative
7 P.O. Box 2576
8 Springfield, IL 62708

Sectran Security Inc.
Attn: Rony Ghaby
P.O. Box 227267
Los Angeles, CA 90022

9 Franchise Tax Board
10 Bankruptcy Section, MS A340
11 P.O. Box 2952
12 Sacramento, CA 95812

Two Farms Inc. d/b/a Royal Farms Attn:
John Kemp
3611 Roland Avenue
Baltimore, MD 21211

13 Corporation Service Company, as
14 Representative
15 801 Adlai Stevenson Drive
16 Springfield, IL 62708

Sectran Security Inc.
7633 Industry Ave
Pico Rivera, CA 90660

17 Enigma Securities Limited
18 30 Panton Street, 6th Floor
19 London, SW1Y 4AJ United Kingdom

Texas Workforce Commission Regulatory
Integrity Division – SAU 101 E. 15th
Street, Room 556
Austin, TX 78778

20 ###
21
22
23
24
25
26
27
28